City of Lafayette Staff Report

To:	City Council
From:	John M Luttropp, Associate Engineer
Date Written:	August 25, 2008
Meeting Date:	September 22, 2008
Subject:	3830, 3834, 3836 and 3840 Happy Valley Road– Request for Landscape Improvements Encroachment into the City's Right-of-Way and Sidewalk Easement Dedication along Happy Valley Road

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Introduction

The subject property owners previously applied for permits to construct improvements to their properties, including the construction of a new pedestrian pathway and landscaping within the City right of way along the frontage of the four subject parcels. The work was completed as shown on the previously submitted development drawings. Per the conditions of approval for this development the property owners are required to dedicate an easement to the City of Lafayette for the portion of the pedestrian pathway that lies on private property. In addition they are required to enter into an encroachment agreement for the installation of landscaping materials within the public right of way. The owners have submitted all the required documents associated with the sidewalk easement dedication and landscape encroachment agreement. At this time staff recommends that the City Council formally accept the easement and encroachment agreement so that they may be recorded.

Discussion

The subject property owners purchased the home at 3834 Happy Valley Road and subsequently demolished it and utilized the lot to create a more extensive entry treatment to their individual homes. As part of this redevelopment the existing narrow pedestrian pathway was reconstructed and widened to 4 feet, the City's storm drain system was extended thereby eliminating a short section of open ditch and a short section of roadside ditch was placed in a new storm drain system and the surrounding area landscaped to conform with the pathway configuration on the adjacent properties at 3844 and 3840 Happy Valley Road.

At this time the City does not have plans to widen Happy Valley Road or to install additional improvements along the edge of the road in the near future. The property owners understand that they are responsible for removing the encroaching improvements if deemed necessary by the City. Based on these considerations, staff recommends approval of this encroachment with the following conditions:

1. The applicants are willing to accept a hold harmless clause as part of the encroachment agreement.
2. The City will reserve the right, if necessary, to require relocation or removal of the fence located within the City right of way at the owners' expense in the future.

Fiscal Impact

None

Recommendation

It is recommended that the City Council approve the encroachment into the City right of way along 3830, 3834, 3836, and 3840 Happy Valley Road and authorize the Mayor to execute an encroachment agreement with the applicants.

It is recommended that the City Council accept the pathway easement dedication at 3830, 3834, 3836, and 3840 Happy Valley Road. The City Manager will execute a Certificate of Acceptance for recordation.

When Recorded mail to:
City Clerk
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Assessor's No. 246-090-012

OFFER OF DEDICATION -- SIDEWALK EASEMENT

(I) (WE) John and Heather Winther the undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the CITY OF LAFAYETTE, and its successor or assign, of an easement for sidewalk improvements, including construction, access or maintenance of works, improvements and structures, and access to the public, upon the real property situated in the CITY OF LAFAYETTE, County of Contra Costa, State of California, described in Exhibit "A" and "B" attached.

It is understood that this offer is irrevocable and may be accepted by the CITY at any time under Government Code §7050.

It is further understood and agreed that the CITY OF LAFAYETTE and its successor or assign shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, its successor or assign, or by the City Manager on behalf of the City.

Owner(s) shall indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims of damages or injury arising from Owner's(s') use of the property or from any activity, work, or thing done, permitted, or suffered by Owner(s) in or about the property and shall further indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims arising from any act or omission of Owner(s) or against and from all costs, attorney's fees, expenses, and liability incurred in or about any claim or any action or proceedings be brought against CITY OF LAFAYETTE by result of any such claim.

The provisions of this offer shall inure to the benefit of and be binding upon the heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the owners have executed this instrument this 29 day of August, 2008. (Attach notarial acknowledgement)

Heather Winther

EXHIBIT "A"

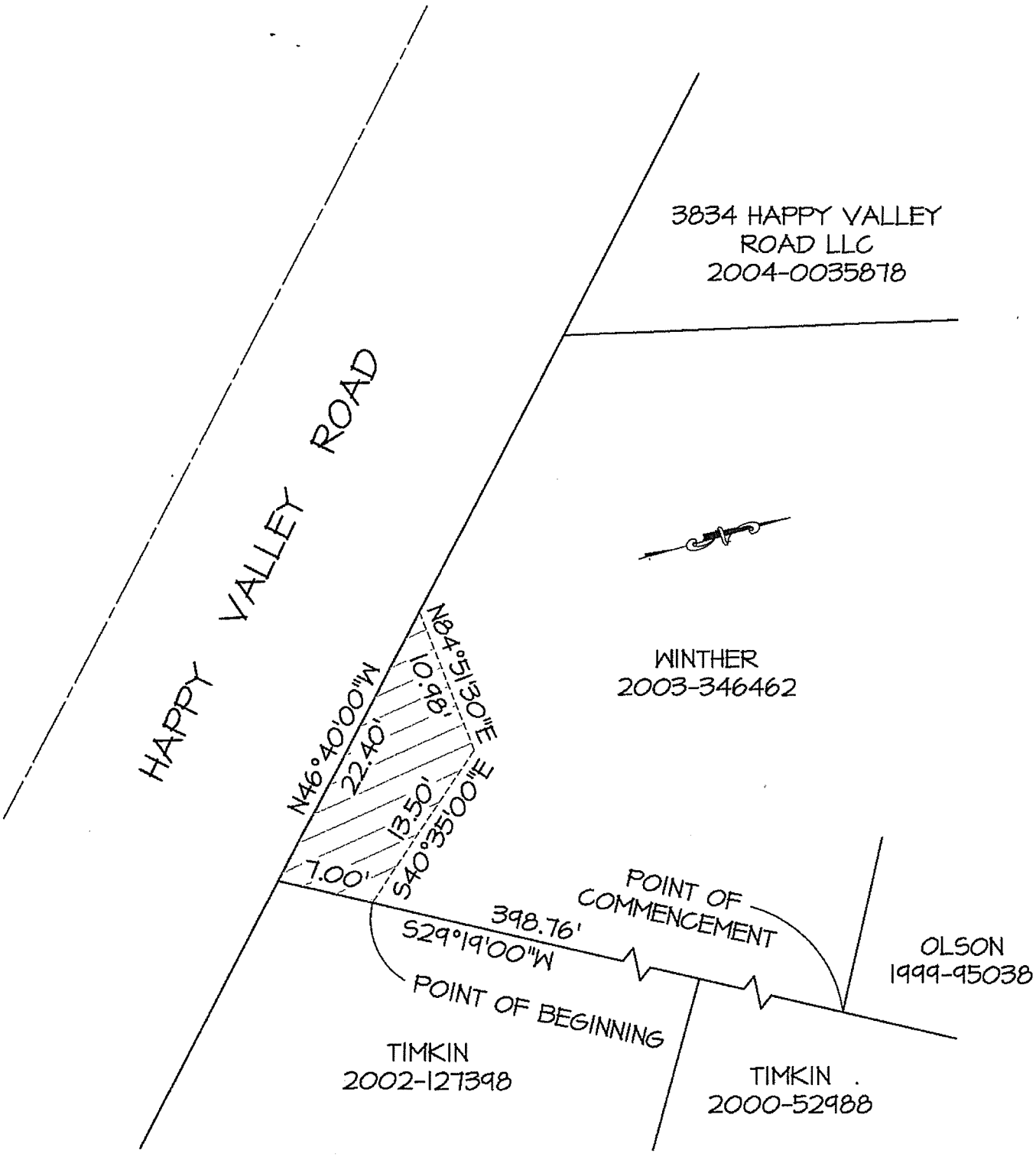
THE LAND REFERRED TO IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE LAND DESCRIBED IN THE GRANT DEED TO JOHN R. WINTHER AND HEATHER P. WINTHER, TRUSTEES OF THE WINTHER FAMILY REVOCABLE TRUST, FILED JULY 7, 2003, DOCUMENT NUMBER 2003-346462, CONTRA COSTA COUNTY OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHEASTERLY CORNER OF THE LAND DESCRIBED IN THE GRANT DEED TO JOHN R. WINTHER AND HEATHER P. WINTHER, TRUSTEES OF THE WINTHER FAMILY REVOCABLE TRUST (2003-346462); THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 29°19'00" WEST ALONG THE EASTERLY LINE OF SAID LAND, 398.76 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING CONTINUING SOUTH 29°19'00" WEST ALONG THE EASTERLY LINE OF SAID LAND, 7.00 FEET TO A POINT ON THE NORTHERLY LINE OF THE COUNTY ROAD KNOWN AS HAPPY VALLEY ROAD (151 DEEDS 129); THENCE NORTH 46°40'00 WEST ALONG SAID NORTH LINE OF HAPPY VALLEY ROAD, 22.40 FEET; THENCE LEAVING SAID NORTH LINE OF HAPPY VALLEY ROAD NORTH 84°51'30" EAST, 10.98 FEET; THENCE SOUTH 40°35'00" EAST, 13.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 136 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"



SCALE: 1"=10'

JOB # 12374

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Alameda

On August 29, 2008 before me, Sarah King Irving,
(Here insert name and title of the officer)

personally appeared John Winther,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

SARAH KING IRVING
Commission # 1761797
Notary Public - California
Alameda County
My Comm. Expires Aug 16, 2011

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
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- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Alameda

On August 29, 2008 before me, Sarah King Irving,
(Here insert name and title of the officer)

personally appeared Heather Winther,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

SARAH KING IRVING
Commission # 1761797
Notary Public - California
Alameda County
My Comm. Expires Aug 16, 2011

WITNESS my hand and official seal.

Signature of Notary Public (Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

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(Title or description of attached document continued)

Number of Pages _____ Document Date_____

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(Title)

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- Securely attach this document to the signed document

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
P.O. Box 1968)
Lafayette, CA 94549)

AGREEMENT

(Encroachment of Landscaping within a Public
Right-of-Way along Happy Valley Road at 3830 Happy Valley Road, Lafayette)

This Agreement is entered into this 8 September 2008, between John and Heather Winther ("Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3830, Lafayette, California, APN 246-090-012 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to landscape the Property, which will encroach into the public right-of-way along Happy Valley Road, at 3830 Happy Valley Road. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and placement of the landscaping.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Landscaping.

Property Owner is permitted to place landscaping which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Happy Valley Road at 3830 Happy Valley Road subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the landscaping without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the landscaping within the right-of-way area as installed and maintained by Property Owner. Property Owner also assumes the risk of damage to landscaping installed in the right-of-way area.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the landscaping permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the "taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a "taking", including reasonable attorneys' fees and costs, alleged to have resulted from the location of the landscaping within the right-of-way area allowed by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the landscaping. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain the Landscaping.

Property Owner is responsible for maintaining the landscaping described in Paragraph 1. Property Owner shall maintain the landscaping in a safe and attractive condition as an encroachment within the City's right-of-way area. The landscaping may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the landscaping, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make the necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the landscaping, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the landscaping, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroaching landscaping. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the landscaping which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the landscaping. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the landscaping described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:
City of Lafayette P.O. Box 1968 Lafayette, CA 94549

Notices to Property Owner shall be addressed:
John and Heather Winther
3830 Happy Valley Road
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the landscaping.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Mayor
Mike Anderson

PROPERTY OWNERS

John Winther

Heather Winther

Heather Winther

* Notarial Acknowledgment Required.

ATTEST:

_____
City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

PORTION OF RANCHO ACALANES, DESCRIBED AS FOLLOWS:

BEGINNING ON THE CENTER LINE OF THE COUNTY ROAD KNOWN AS HAPPY VALLEY ROAD, AT THE WEST TERMINUS OF THE LINE GIVEN AS SOUTH 46 DEGREES 40' EAST, 11.28 FEET IN THE DESCRIPTION OF PARCEL ONE AS DESCRIBED IN THE DECREE QUIETING TITLE, DATED JULY 21, 1933, ENTERED UNDER ACTION NO. 18207, ENTITLED NEW SPRING FARM COMPANY, PLANTIFF, VS. J.H. MULLIKIN, ET AL, DEFENDANTS, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 21, 1933 IN VOLUME 332 OF OFFICIAL RECORDS, AT PAGE 398; THENCE FROM SAID POINT OF BEGINNING ALONG THE WEST LINE OF SAID PARCEL ONE (332 OR 398) NORTH 13 DEGREES 57' 30" EAST 409.56 FEET AND NORTH 18 DEGREES 38' 30" EAST 21.19 FEET; THENCE SOUTH 61 DEGREES 07' EAST 150.36 FEET TO THE EAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM MARTHA L. JOHNSON, ET AL, TO MARTHA L. JOHNSON, ET AL, RECORDED APRIL 7, 1959 IN VOLUME 3350 OF OFFICIAL RECORDS, AT PAGE 8; THENCE SOUTH 29 DEGREES 19' WEST, ALONG SAID EAST LINE, 426.36 FEET TO THE CENTER LINE OF SAID HAPPY VALLEY ROAD; THENCE NORTH 46 DEGREES 40' WEST ALONG SAID CENTER LINE, 39.13 FEET TO THE POINT OF BEGINNING.

EXCEPTING ANY PORTION OF THE COUNTY ROAD CONVEYED TO THE COUNTY OF CONTRA COSTA BY MARY C. JOHNSON, WIDOW AND ADMINISTRATRIX OF THE ESTATE OF JOHN JOHNSON, DECEASED ET AL, BY DEED DATED OCTOBER 1, 1909 AND RECORDED APRIL 7, 1910 IN VOLUME 151 OF DEEDS, PAGE 529, LYING WITHIN THE ABOVE DESCRIBED TRAT.

A.P.N. 246-090-012

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Alameda

On August 29, 2008 before me, Sarah King Irving,
(Here insert name and title of the officer)

personally appeared John & Heather Winther,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

SARAH KING IRVING
Commission # 1761797
Notary Public - California
Alameda County
My Comm. Expires Aug 16, 2011

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

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- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
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  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

When Recorded mail to:
City Clerk
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Assessor's No. 246-100-005

OFFER OF DEDICATION -- SIDEWALK EASEMENT

(I) (WE) Ronald and Mary Nahas the undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the CITY OF LAFAYETTE, and its successor or assign, of an easement for sidewalk improvements, including construction, access or maintenance of works, improvements and structures, and access to the public, upon the real property situated in the CITY OF LAFAYETTE, County of Contra Costa, State of California, described in Exhibit "A" and "B" attached.

It is understood that this offer is irrevocable and may be accepted by the CITY at any time under Government Code §7050.

It is further understood and agreed that the CITY OF LAFAYETTE and its successor or assign shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, its successor or assign, or by the City Manager on behalf of the City.

Owner(s) shall indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims of damages or injury arising from Owner's(s') use of the property or from any activity, work, or thing done, permitted, or suffered by Owner(s) in or about the property and shall further indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims arising from any act or omission of Owner(s) or against and from all costs, attorney's fees, expenses, and liability incurred in or about any claim or any action or proceedings be brought against CITY OF LAFAYETTE by result of any such claim.

The provisions of this offer shall inure to the benefit of and be binding upon the heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the owners have executed this instrument this 25th day of August, 2008 (Attach notarial acknowledgement)

Mary Nahas

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On Aug 25, 2008 (Date) before me, Dianna Starr, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Ronald Nahas and Mary Nahas (Name(s) of Signer(s))

,

☒ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

DIANNA STARR
Commission # 1729742
Notary Public - California
Contra Costa County
My Comm. Expires Mar 8, 2011

Place Notary Seal Above

Signature Dianna Starr
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Offer of Dedication - Sidewalk Easement

Document Date: 8/25/08 Number of Pages: One

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ronald Nahas

☒ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: Mary Nahas

☒ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

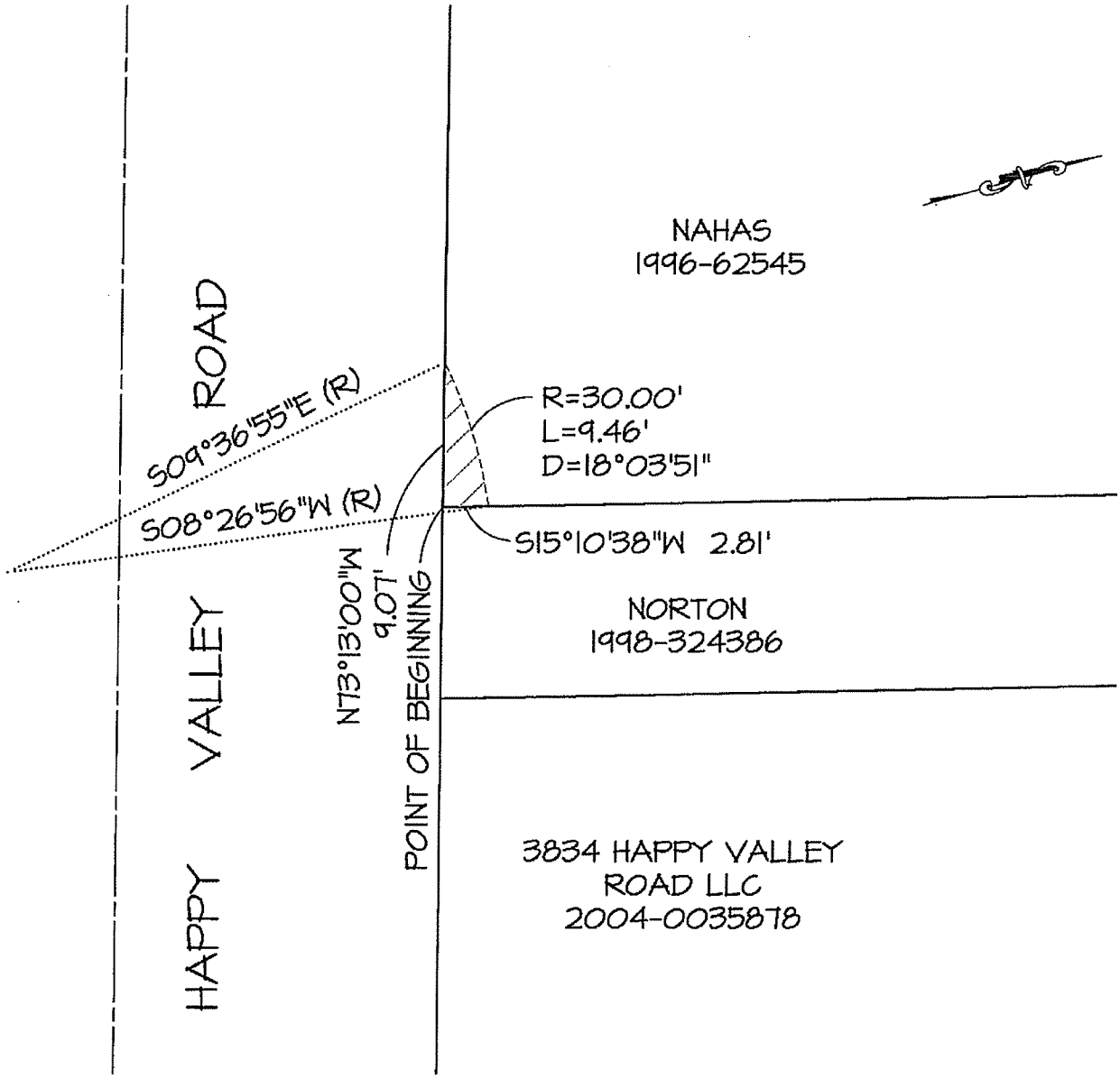
THE LAND REFERRED TO IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE LAND DESCRIBED IN THE GRANT DEED TO RONALD C. NAHAS, TRUSTEE UNDER THE RONALD NAHAS AND MARY NAHAS FAMILY TRUST, FILED APRIL 5, 1998, DOCUMENT NUMBER 1996-62545, CONTRA COSTA COUNTY OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LAND (1996-62545); THENCE FROM SAID POINT OF BEGINNING NORTH 73°13'00" WEST ALONG THE SOUTHERLY LINE OF SAID LAND, 9.07 FEET TO THE A POINT ON SAID SOUTHERLY LINE; THENCE LEAVING SAID SOUTHERLY LINE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, THE CENTER OF WHICH BEARS SOUTH 09°36'55" EAST, THROUGH A CENTRAL ANGLE OF 18°03'51", AN ARC DISTANCE OF 9.46 FEET TO A POINT ON THE EASTERLY LINE OF SAID LAND; THENCE SOUTH 15°10'38" WEST ALONG SAID EASTERLY LINE, 2.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 15 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"



SCALE: 1"=10'

JOB # 12374

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
P.O. Box 1968)
Lafayette, CA 94549)

AGREEMENT

(Encroachment of Landscaping within a Public
Right-of-Way along Happy Valley Road at 3840 Happy Valley Road, Lafayette)

This Agreement is entered into this 8 September 2008, between Ronald and Mary Nahas ("Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3840, Lafayette, California, APN 246-100-005 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to landscape the Property, which will encroach into the public right-of-way along Happy Valley Road, at 3840 Happy Valley Road. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and placement of the landscaping.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Landscaping.

Property Owner is permitted to place landscaping which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Happy Valley Road at 3840 Happy Valley Road subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the landscaping without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the landscaping within the right-of-way area as installed and maintained by Property Owner. Property Owner also assumes the risk of damage to landscaping installed in the right-of-way area.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the landscaping permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the "taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a "taking", including reasonable attorneys' fees and costs, alleged to have resulted from the location of the landscaping within the right-of-way area allowed by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the landscaping. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain the Landscaping.

Property Owner is responsible for maintaining the landscaping described in Paragraph 1. Property Owner shall maintain the landscaping in a safe and attractive condition as an encroachment within the City's right-of-way area. The landscaping may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the landscaping, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make the necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the landscaping, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the landscaping, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroaching landscaping. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the landscaping which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the landscaping. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the landscaping described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:
City of Lafayette P.O. Box 1968 Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Ronald and Mary Nahas
3840 Happy Valley Road
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the landscaping.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____

Mayor
Mike Anderson

PROPERTY OWNERS

_____

Ronald Nahas

Mary Nahas

Mary Nahas

* Notarial Acknowledgment Required.

ATTEST:

_____

City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On Aug 25, 2008 (Date) before me, Dianna Starr, Notary Public, (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Ronald Nahas and Mary Nahas (Name(s) of Signer(s))

,

☒ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

DIANNA STARR
Commission # 1729742
Notary Public - California
Contra Costa County
My Comm. Expires Mar 6, 2011

Place Notary Seal Above

Signature Dianna Starr
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Landscape Encroachment - City of La Fayette

Document Date: 9-8-08 Number of Pages: 4

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ronald Nahas

☒ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: Mary Nahas

☒ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

A PORTION OF THAT CERTAIN PARCEL IN THE RANCHO ACALANES, AS DESCRIBED IN THE DEED FROM J.H. MULLIKIN, ET UX, TO CLAUDE A. MILLER, ET UX, DATED SEPTEMBER 22, 1943, RECORDED OCTOBER 4, 1943, IN BOOK 750 OF OFFICIAL RECORDS, AT PAGE 217, DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON PIPE IN THE NORTHERLY LINE OF HAPPY VALLEY ROAD, BEING THE SOUTHEASTERLY CORNER OF SAID MILLER PARCEL (750 OR 217) THENCE ALONG SAID NORTHERLY LINE NORTH 46 DEGREES 40' WEST 21.53 FEET AND NORTH 73 DEGREES 13' WEST 85.67 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE NORTHERLY LINE OF HAPPY VALLEY ROAD, NORTH 73 DEGREES 13' WEST 92.45 FEET TO THE EASTERLY LINE OF PROPERTY DESCRIBED IN THE DEED FROM CLAUDE A. MILLER, ET UX, TO LOUIS GOLDENSON, ET UX, DATED NOVEMBER 29, 1944 AND RECORDED DECEMBER 2, 1944, BOOK 808 OF OFFICIAL RECORDS, PAGE 94; THENCE ALONG SAID EASTERLY LINE, NORTH 16 DEGREES 23' 52" EAST 242.51 FEET TO A POINT IN SAID EASTERLY LINE DISTANT THEREON SOUTH 16 DEGREES 23' 52" WEST 175.50 FEET FROM THE NORTHEASTERLY CORNER OF SAID PARCEL (808 OR 94); THENCE SOUTH 13' EAST, 87.28 FEET TO A POINT THAT BEARS NORTH 15 DEGREES 10' 28" EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 15 DEGREES 10' 38" WEST, 242.60 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL TWO:

RIGHT OF WAY GRANTED TO RONALD C. NAHAS, ET UX, RECORDED OCTOBER 17, 1983, BOOK 11503, OFFICIAL RECORDS, PAGE 333 FOR "PEDESTRIAN AND LIGHT VEHICULAR TRAFFIC", AS APPURTENANCE TO PARCEL ONE ABOVE, OVER THAT PORTION OF THE RANCHO ACALANES, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF HAPPY VALLEY ROAD, AT THE SOUTHWEST CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO SAMUEL A SCHAAF, ET UX, RECORDED AUGUST 21, 1947, BOOK 1121, OFFICIAL RECORDS, PAGE 25; THENCE FROM SAID POINT OF BEGINNING NORTH 73 DEGREES 13' WEST, ALONG SAID LINE TO THE EAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED OF TRUST TO TRUSTEE FOR BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, RECORDED AUGUST 21, 1947, BOOK 1210, OFFICIAL RECORDS, PAGE 125; THENCE NORTH 15 DEGREES 10' 38" EAST, ALONG SAID EAST LINE, 242.60 FEET TO A SOUTH LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO RAYMOND L. JACOBS, ET UX, RECORDED AUGUST 21, 1947, BOOK 1121, OFFICIAL RECORDS, PAGE 27; THENCE SOUTH 73 DEGREES 13' EAST, ALONG SAID SOUTH LINE EXTENDED TO THE WEST LINE OF SAID SHAAF PARCEL IN BOOK 1121, OFFICIAL RECORDS, PAGE 25; THENCE SOUTH 15 DEGREES 10' 38" WEST, ALONG SAID WEST LINE, 242.60 FEET TO THE BEGINNING.

A.P.N. 246-100-005

When Recorded mail to:
City Clerk
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Assessor's No. 246-100-001

OFFER OF DEDICATION -- SIDEWALK EASEMENT

(I) (WE) 3834 Happy Valley Road LLC the undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the CITY OF LAFAYETTE, and its successor or assign, of an easement for sidewalk improvements, including construction, access or maintenance of works, improvements and structures, and access to the public, upon the real property situated in the CITY OF LAFAYETTE, County of Contra Costa, State of California, described in Exhibit "A" and "B" attached.

It is understood that this offer is irrevocable and may be accepted by the CITY at any time under Government Code §7050.

It is further understood and agreed that the CITY OF LAFAYETTE and its successor or assign shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, its successor or assign, or by the City Manager on behalf of the City.

Owner(s) shall indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims of damages or injury arising from Owner's(s') use of the property or from any activity, work, or thing done, permitted, or suffered by Owner(s) in or about the property and shall further indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims arising from any act or omission of Owner(s) or against and from all costs, attorney's fees, expenses, and liability incurred in or about any claim or any action or proceedings be brought against CITY OF LAFAYETTE by result of any such claim.

The provisions of this offer shall inure to the benefit of and be binding upon the heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the owners have executed this instrument this 25th day of August, 2008 (Attach notarial acknowledgement)

manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On Aug 25, 2008 (Date) before me, Dianna Starr, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Ronald Nahas and John Winther (Name(s) of Signer(s))

,

☒ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____ (Signature of Notary Public)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Sidewalk Easement Dedication

Document Date: 8-25-08 Number of Pages: 1

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ronald Nahas

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: 3834 Happy Valley Road LLC

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: John Winther

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: LLC

Signer Is Representing: 3834 Happy Valley Rd LLC

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

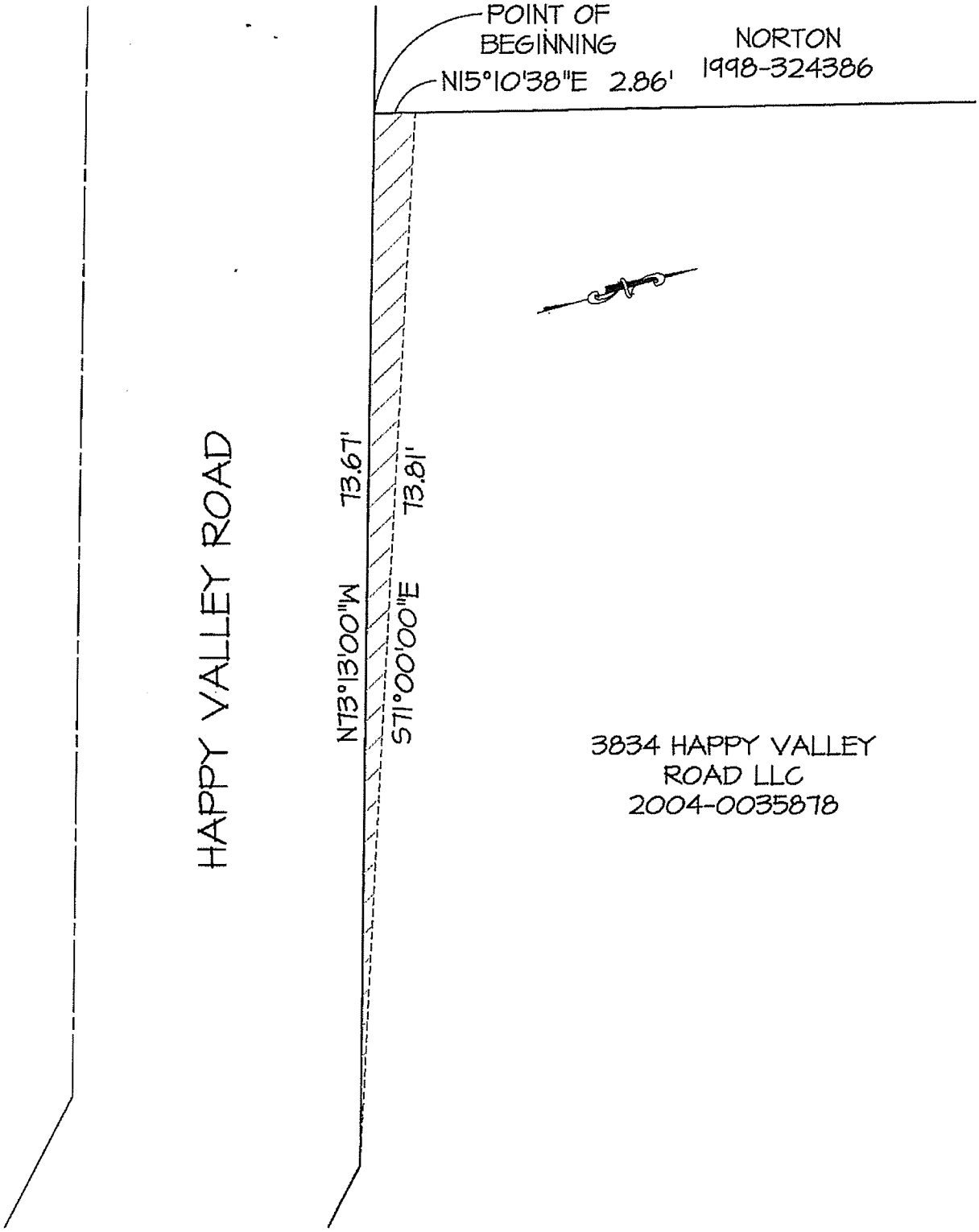
THE LAND REFERRED TO IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE LAND DESCRIBED IN THE GRANT DEED TO 3834 HAPPY VALLEY ROAD LLC, FILED FEBRUARY 3, 2004, DOCUMENT NUMBER 2004-0035878, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHWESTERLY CORNER OF SAID LAND (2004-0035878); THENCE FROM SAID POINT OF BEGINNING NORTH 15°10'38" EAST ALONG THE WESTERLY LINE OF SAID LAND, 2.86 FEET; THENCE LEAVING SAID WESTERLY LINE SOUTH 71°00'00" EAST, 73.81 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LAND; THENCE NORTH 73°13'00" WEST ALONG SAID SOUTHERLY LINE, BEING ALSO THE NORTHERLY LINE OF HAPPY VALLEY ROAD, 73.67 FEET TO THE POINT OF BEGINNING.

CONTAINING 105 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"



SCALE: 1"=10'

JOB # 12374

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
P.O. Box 1968)
Lafayette, CA 94549)

AGREEMENT

(Encroachment of Landscaping within a Public
Right-of-Way along Happy Valley Road at 3834 Happy Valley Road, Lafayette)

This Agreement is entered into this 8 September 2008, between 3834 Happy Valley Road LLC ("Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3834, Lafayette, California, APN 246-100-001 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to landscape the Property, which will encroach into the public right-of-way along Happy Valley Road, at 3834 Happy Valley Road. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and placement of the landscaping.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Landscaping.

Property Owner is permitted to place landscaping which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Happy Valley Road at 3834 Happy Valley Road subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the landscaping without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the landscaping within the right-of-way area as installed and maintained by Property Owner. Property Owner also assumes the risk of damage to landscaping installed in the right-of-way area.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the landscaping permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the "taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a "taking", including reasonable attorneys' fees and costs, alleged to have resulted from the location of the landscaping within the right-of-way area allowed by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the landscaping. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain the Landscaping.

Property Owner is responsible for maintaining the landscaping described in Paragraph 1. Property Owner shall maintain the landscaping in a safe and attractive condition as an encroachment within the City's right-of-way area. The landscaping may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the landscaping, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make the necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the landscaping, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the landscaping, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroaching landscaping. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the landscaping which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the landscaping. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the landscaping described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:
City of Lafayette P.O. Box 1968 Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Happy Valley Road LLC
3834 Happy Valley Road
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the landscaping.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____

Mayor
Mike Anderson

PROPERTY OWNERS

_____ manager

_____

* Notarial Acknowledgment Required.

ATTEST:

_____

City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On Aug 25, 2008 (Date) before me, Dianna Starr Notary Public, (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Ronald Nahas, John Winther (Name(s) of Signer(s))

,

☐ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

DIANNA STARR
Commission # 1729742
Notary Public - California
Contra Costa County
My Comm. Expires Mar 8, 2011

Place Notary Seal Above

Signature Dianna Starr
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Landscape Encroachment

Document Date: 9-8-08 Number of Pages: 4

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ronald Nahas

☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: LLC

Signer Is Representing: 3834 Happy Valley Rd LLC

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: John Winther

☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: LLC

Signer Is Representing: 3834 Happy Valley Rd LLC

RIGHT THUMBPRINT OF SIGNER
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EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE COUNTY ROAD KNOWN AS HAPPY VALLEY ROAD, AT AN IRON PIPE SET AT THE SOUTHEAST CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM J. H. MULLIKIN, ET UX, TO CLAUDE A. MILLER, ET UX, DATED SEPTEMBER 22, 1943, RECORDED OCTOBER 4, 1943, IN BOOK 750 OF OFFICIAL RECORDS OF CONTRA COSTA COUNTY, PAGE 217; THENCE FROM SAID POINT OF BEGINNING ALONG SAID NORTH LINE, MORTH 46 DEGREES 40' WEST, 21.53 FEET AND NORTH 73 DEGREES 13' WEST, 73.67 FEET TO AN EAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM A.J. CLANCY, ET UX, TO RAYMOND L. JACOBS, ET UX, DATED JULY 26, 1947, RECORDED AUGUST 21, 1947, IN BOOK 1121 OF OFFICIAL RECORDS OF CONTRA COSTA COUNTY, PAGE 27; THENCE ALONG THE EXTERIOR BOUNDARY LINES OF SAID JACOBS PARCEL (1121 OR 27) NORTH 15 DEGREES 10' 38" EAST 242.60 FEET AND SOUTH 73 DEGREES 13' EAST, 87.28 FEET TO THE EAST LINE OF SAID MILLER PARCEL (750 OR 217); THENCE SOUTH 13 DEGREES 57' 30" WEST ALONG SAID EAST LINE, 252.44 FEET TO THE POINT OF BEGINNING.

A.P.N. 246-100-001

When Recorded mail to:
City Clerk
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Assessor's No. 246-100-003

OFFER OF DEDICATION -- SIDEWALK EASEMENT

(I) (WE) Doug and Christi Norton the undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the CITY OF LAFAYETTE, and its successor or assign, of an easement for sidewalk improvements, including construction, access or maintenance of works, improvements and structures, and access to the public, upon the real property situated in the CITY OF LAFAYETTE, County of Contra Costa, State of California, described in Exhibit "A" and "B" attached.

It is understood that this offer is irrevocable and may be accepted by the CITY at any time under Government Code §7050.

It is further understood and agreed that the CITY OF LAFAYETTE and its successor or assign shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, its successor or assign, or by the City Manager on behalf of the City.

Owner(s) shall indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims of damages or injury arising from Owner's(s') use of the property or from any activity, work, or thing done, permitted, or suffered by Owner(s) in or about the property and shall further indemnify and hold harmless CITY OF LAFAYETTE against and from any and all claims arising from any act or omission of Owner(s) or against and from all costs, attorney's fees, expenses, and liability incurred in or about any claim or any action or proceedings be brought against CITY OF LAFAYETTE by result of any such claim.

The provisions of this offer shall inure to the benefit of and be binding upon the heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the owners have executed this instrument this 11 day of September, 2008. (Attach notarial acknowledgement)

Christi Norton

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of CONTRA COSTA COUNTY }

On 9/11/08 (Date) before me, LORRAINE CASTILLO (Here Insert Name and Title of the Officer),

personally appeared DOUG NORTEN (Name(s) of Signer(s))

,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

LORRAINE CASTILLO
Commission # 1784918
Notary Public - California
Contra Costa County
My Comm. Expires Dec 13, 2011

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of CONTRA COSTA COUNTY }

On 9/11/08 (Date) before me, LORRAINE CASTILLO (Here Insert Name and Title of the Officer),

personally appeared CHRISTI NORTON (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

LORRAINE CASTILLO
Commission # 1786918
Notary Public - California
Contra Costa County
My Comm. Expires Dec 13, 2011

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

Place Notary Seal Above

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☐ Other: _____

Signer Is Representing: _____

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☐ Partner — ☐ Limited ☐ General
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When Recorded Return To:)
)
City Clerk)
City of Lafayette)
P.O. Box 1968)
Lafayette, CA 94549)

AGREEMENT

(Encroachment of Landscaping within a Public
Right-of-Way along Happy Valley Road at 3836 Happy Valley Road, Lafayette)

This Agreement is entered into this 8 September 2008, between Doug and Christi Norton ("Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3836, Lafayette, California, APN 246-100-003 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to landscape the Property, which will encroach into the public right-of-way along Happy Valley Road, at 3836 Happy Valley Road. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and placement of the landscaping.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Landscaping.

Property Owner is permitted to place landscaping which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along Happy Valley Road at 3836 Happy Valley Road subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the landscaping without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the landscaping within the right-of-way area as installed and maintained by Property Owner. Property Owner also assumes the risk of damage to landscaping installed in the right-of-way area.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the landscaping permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the "taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a "taking", including reasonable attorneys' fees and costs, alleged to have resulted from the location of the landscaping within the right-of-way area allowed by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the landscaping. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain the Landscaping.

Property Owner is responsible for maintaining the landscaping described in Paragraph 1. Property Owner shall maintain the landscaping in a safe and attractive condition as an encroachment within the City's right-of-way area. The landscaping may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the landscaping, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make the necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the landscaping, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the landscaping, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroaching landscaping. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the landscaping which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the landscaping. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the landscaping described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:
City of Lafayette P.O. Box 1968 Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Doug and Christie Norton
3836 Happy Valley Road
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the landscaping.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Mayor
Mike Anderson

PROPERTY OWNERS

_____
Doug Norton

_____
Christi Norton

* Notarial Acknowledgment Required.

ATTEST:

_____
City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On 9/11/08 (Date) before me, Lorraine Castillo (Here Insert Name and Title of the Officer),

personally appeared Christi Morten (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

LORRAINE CASTILLO
Commission # 1784918
Notary Public - California
Contra Costa County
My Comm. Expires Dec 13, 2011

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Signer Is Representing: _____

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of CONTRA COSTA COUNTY

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